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# **YOUR RIGHTS**

## **AS AN ADULT RECEIVING TREATMENT IN A MENTAL HEALTH FACILITY IN INDIANA**

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THE PROTECTION AND ADVOCACY SYSTEM FOR INDIANA  
MEMBER: NATIONAL DISABILITY RIGHTS NETWORK

**Revised February 2013**

*The information and procedures set forth in this booklet are subject to change and, therefore, should serve only as a foundation for further investigation and study of the current law and procedures related to the subject. All information and procedures contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.*

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*Revised February 2013*

# Rights, So Where Do They Come From?

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The rights that we all enjoy as citizens of the United States come from a variety of sources, and have accrued them over a long period of time. The most well-known rights, such as freedom of religion, speech, etc., come from the U.S. Constitution. However, most of the rights that we enjoy, including those afforded to residents of mental health and other facilities, were created by and are contained within federal and state laws and regulations.

Individuals who receive mental health services are protected by the Federal Patient Bill of Rights (42 U.S.C. 10841); Indiana's law entitled Rights of Individuals Being Treated for Mental Illness or Developmental Disability (Indiana Code 12-27-1 and 12-27-3 et. seq.); and Indiana's Constitutional Rights of Patients in Residential Settings (Indiana Code 12-27-3 et. seq.), as well as several other federal and state laws and regulations.

Rights of patients may also be created, conveyed, defined or expanded by federal and state court decisions. Facilities that are accredited by or subject to the rules and guidelines of non-governmental or private entities may also be subject to the statement of rights that those entities have adopted.

Those who read this publication should remember that rights can change based on the passage or amendment of laws or decisions rendered by courts as to issues involving rights. Therefore, it would be advisable to speak to someone with knowledge in this area at the time an issue or question might arise to verify the current state of the law in regard to rights of patients.

There are several legal actions and concepts that can affect the rights of a person. The most common legal areas and concepts that can have an impact on a person's rights include:

1. Commitment status and type,
2. Guardianship, and
3. Age.

# Rights, So Where Do They Come From? (cont.)

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**Rights are meaningless unless they are respected by others and, if violated, the individual takes steps to have his/her rights upheld.**

Among the rights granted to mental health patients and residents of facilities under Federal and State laws and regulation are:

## **THE RIGHT TO...**

**Appropriate mental health services and/or developmental training** in accordance with standards of professional practice, appropriate to your needs and designed to afford you a reasonable opportunity to improve your condition.

**Participate in the planning of an individualized written treatment plan and be informed of the nature of the treatment or habilitation program proposed**, the known effects of receiving and not receiving such treatment and alternative treatments or habilitation programs, if any exist.

**Refuse to submit to treatment**, including medications, or habilitation programs if you are an adult voluntary patient.

**Petition the committing court** for review of your treatment program if you are an involuntary patient.

**Not participate in experimental research or treatment** without your *informed, voluntary, written consent*, which can be withdrawn at any time.

**Be free from seclusion and chemical or physical restraint**, unless necessary to prevent you from causing danger or injury to yourself or others, when such restraint is used as a therapeutic treatment.

**Have your records confidentially maintained as required by law.**

**Not have your records released** to someone who is not authorized by law to receive them, unless you provide *written* consent.

**Inspect and copy your own records** (*at your expense*), unless denied for good cause.

**Humane care and protection from harm.**

**Be treated with consideration, dignity and respect**, free from mental, verbal and physical abuse, neglect and mistreatment.

**Be free from discrimination** in receiving services on the basis of age, race, color, sex, religious creed, national origin, ancestry and/or handicap.

**Contact and consult privately with an attorney** of your choice (*at your expense*).

**Consult with a doctor** of your choice (*at your expense*).

**Be informed of advocacy services** available to you.

**Be informed of your rights promptly at the time of your admission to the facility and periodically thereafter.** The statement of your rights must be conveyed to you in a manner of communication that you can understand.

**Vote in national, state or local elections** which may occur during your stay at the facility. There is no legal effect on your right to vote simply because you are involved in a commitment or guardianship proceeding.

**Have access to the facility's grievance process** (*which must exist by law*) and use the process to assert any grievances and appeals you might maintain regarding the violation of your rights. Access to the grievance process must be provided to you without any reprisals toward you for the use of the process.

## **A Second Group of Rights are Commonly Referred to as Conditional Rights**

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Conditional Rights (I.C. 12-27-3 et. seq.) are those rights that may only be restricted under certain circumstances. However, they cannot be restricted unless certain legal standards are met.

These rights may be restricted only under these circumstances:

1. In the circumstances and according to the procedures established by rules of the appropriate division.
2. Because of inconsistency with the design of a treatment or habilitation program if the program design has been approved by the division.
3. On an individual basis, only for good cause as set forth in the individual treatment record and approved by the person primarily responsible for the patient's care and treatment.

Should the facility choose to restrict a conditional right, it must be done for good cause, documented in your records, and notice of the denial or limitation of rights must be given to the:

1. Patient.
2. Guardian or appointed advocate of the patient.

Otherwise, individuals should be able to exercise all conditional rights which include the

## **LEGAL RIGHT TO...**

**Wear your own clothes.**

**Keep and use personal possessions.**

**Keep and be allowed to spend reasonable amounts of your own money.**

**Have access to individual storage space for your private use.**

**Maintain reasonable means of communication with persons outside the facility.**

**Be visited at reasonable times.**

**Converse with others privately.**

**Receive and send sealed (unopened) mail.**

**Have access to a reasonable amount of letter writing materials and postage.**

**Place and receive telephone calls** (*at the patient's own expense*).

**Be free from a requirement to work** for the facility with or without pay, except commonly required personal housekeeping. Residents of state-operated facilities cannot be made to apply any of their earnings to their hospital bill.

# What is a “Commitment”?

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A “commitment” describes the legal status of a person receiving mental health care and also describes the legal process by which a court may issue an order for mental health care. This order is known as a “commitment order”. There are two kinds of commitments, voluntary and involuntary. Not every state has the same commitment laws. The type and kind of commitment can change during an individual’s stay at a facility.

## **Voluntary Admission**

When a person over 18 years of age freely chooses to become a patient in a psychiatric hospital, a consent for treatment is signed, indicating a willingness to be in the hospital.

## **Involuntary Admission**

There are four types of involuntary admissions, which can occur when a person is mentally ill:

1. Immediate detention,
2. Emergency detention,
3. Temporary commitment, and
4. Regular commitment.

A temporary or regular commitment order may be issued by a judge as a result of a commitment petition being filed in court and or as a result of a commitment hearing.

# Definitions of Terms Used in Indiana's Commitment Statutes

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**Dangerous** is defined as a condition in which an individual, as a result of mental illness, presents a substantial risk that he/she will harm himself/herself or others.

**Gravely disabled** means a condition in which an individual, as a result of mental illness, is in danger of coming to harm because he/she: 1) is unable to provide for his/her food, clothing, shelter, or other essential human needs; or 2) has a substantial impairment or an obvious deterioration of his/her judgment, reasoning or behavior that results in his/her inability to function independently.

**Mental illness** for the purpose of the commitment statutes is defined as a psychiatric disorder that substantially disturbs an individual's thinking, feeling or behavior and impairs the person's ability to function. The term *mental illness* includes *mental retardation, alcoholism and addiction to narcotics or dangerous drugs*.

# Definitions of Terms Used in Indiana's Commitment Statutes (cont.)

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**Involuntary patients** have the same basic rights as voluntary patients, including confidentiality, humane care and treatment, freedom from harm, etc.; however, they cannot leave the facility whenever they want, nor can they refuse some types of treatment, including medications, without court authorization. An individual involuntarily committed is not considered incompetent and still retains the right to:

1. Dispose of property
2. Sign documents for himself/herself and provide his/her own consents
3. Make purchases
4. Enter into contracts
5. Give testimony in a court of law
6. Vote

## **Immediate Detention (Indiana Code 12-26-4)**

A person with mental illness can be detained for *24 hours* if a law enforcement officer has reasonable grounds to believe that the person is:

- Mentally ill,
- Dangerous to self or others, and
- In immediate need of hospitalization and treatment.

The officer may apprehend and transport that person to the nearest appropriate facility that is not a state institution. The officer may also charge the person with an offense if applicable.

The officer must submit a written statement to the facility containing the basis for his/her conclusion that reasonable grounds exist for immediate detention. The superintendent of the facility, or a physician, may furnish emergency treatment necessary to preserve the health and safety of the person detained.

A person cannot be detained for more than *24 hours* from the time of admission without some further action. If the superintendent or attending physician believes the person should be detained longer, he/she must have an application for emergency detention filed immediately upon the availability of a judge, or within *72 hours* of admission, whichever is shorter.

### **Emergency Detention (Indiana Code 12-26-5)**

A person can be detained in a psychiatric facility for up to *72 hours* (excluding Saturdays, Sundays and legal holidays) if written application is made to a court by the facility stating the belief that the person is:

- Mentally ill,
- Either dangerous or gravely disabled, and
- In need of immediate restraint.

The application must include a written statement by at least one physician that, based on an examination or based on information given, the person may be mentally ill and either dangerous or gravely disabled. *The person may not be detained in a state institution unless the detention is instituted by the state institution.*

# Definitions of Terms Used in Indiana's Commitment Statutes (cont.)

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## **Temporary Commitment (Indiana Code 12-26-6)**

A person can be temporarily committed to an appropriate facility for a *period of up to 90 days* if he/she is found by the court to be:

- Mentally ill, and
- Either dangerous or gravely disabled.

Prior to the end of the temporary commitment, proceedings for an extension can be filed with the court. The extension, if granted, *cannot exceed 90 days*.

## **Regular Commitment (Indiana Code 12-26-7)**

Proceedings for regular commitment are initiated for a person who is 1) alleged to be mentally ill and either dangerous or gravely disabled, and 2) whose commitment is reasonably expected to require custody, care or treatment in a facility for more than 90 days. These conditions must be included in the written statement of a physician who has examined the individual within the past *30 days*.

If the commitment is to a state institution, a community mental health center must evaluate the individual and report that the commitment is appropriate. The court may order the individual's custody, care or treatment in an appropriate facility until that person has been discharged or until the court enters an order terminating the commitment.

**Commitments can be for outpatient services as well as inpatient.** Under an outpatient commitment, the court can impose restrictions and requirements on an individual living in the community. The timelines and right to review of the commitment order are the same as those for inpatient commitments.

# Guardianship

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## **A Court-Supervised Arrangement**

“Guardian” means a person who is appointed by a court to be a conservator responsible as the court may direct for the person or the property of an incapacitated person or a minor. The terms “guardian” and “conservator” are interchangeable. This requires a court determination that an individual is incapacitated and the appointment of a guardian is necessary. (Indiana’s Guardianship law is IC 29-3-3 et. seq.)

To be considered as an incapacitated person (ward), the court must determine that the individual either cannot be located upon reasonable inquiry or is unable to manage in whole or in part his/her property or to provide self-care because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual or other incapacity; or has a developmental disability (as defined in IC 12-7-2-61).

When the court determines that a guardianship is needed, it will also determine what the guardianship is to cover, insofar as decision making as to the person and/or his/her property. While the guardian is given the power to make decisions for the ward in the areas determined by the court, the guardian’s decisions must be made consistent with the best interests of the ward.

A guardianship can, depending on the court’s order, greatly restrict your ability to exercise your rights.

Guardianship does not prohibit the protected individual from petitioning the court to reconsider whether he/she is still in need of a guardian or whether the guardian is acting in his/her best interests.

# Age

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Individuals under the age of 18, Indiana's age of majority, are considered to be minors. As minors, rights are restricted by the law because minors are deemed incompetent due to age, not due to any diagnosis.

Federal law specifically lists rights that an individual does not have due to age. A minor does not have the right to refuse treatment or the right to give consent for treatment, nor does the minor have the right to give consent to allow or to stop others from reviewing his/her treatment records.

No other restrictions on the rights of individuals are listed in federal statute; hence, an admission to a facility would not preclude an individual from exercising his/her rights as any other individual. A minor has the right to participate in his/her treatment planning, use the grievance process, be visited at reasonable hours and converse in private with individuals. His/her parent or guardian continues to hold the authority to make decisions regarding his/her life just as any parent would if the minor was not in treatment.

For a minor admitted to a treatment facility, an individual employed at the facility or who is receiving any compensation from the facility is prohibited from acting as that minor's guardian or representative.

# IPAS's Responses to Frequently Asked Questions

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## **I was committed without seeing the judge.**

In a renewal of regular commitment, often an individual will be recommitted without a hearing. This is legal according to the statutes.

At least once a year, the court requires the facility to submit a report on the condition of the patient, indicating whether or not the patient is dangerous or gravely disabled. The report makes a recommendation about whether the patient should remain at the facility and whether the patient is in need of a guardian.

Once the court has received this statement from the facility, it may take one of three actions. The most common court response will be to issue an order for continued treatment and care, or for "recommitment." The court could issue an order for the termination of the commitment and release of the patient. Or, the court may set a date for a hearing to hear further evidence on the matter.

Should the court issue an order continuing the commitment, then the patient or his/her representative will receive a copy of the order and may request a court hearing. This right to a review (hearing) is limited to one time per year, unless the court determines there is good cause for any additional reviews.

Once a hearing request is received by the court, a hearing date will be set. The court can set the date for the hearing at any time the court chooses. The patient and his/her legal counsel will receive a notice of the hearing date at least five (5) days before the hearing.

## IPAS's Responses to Frequently Asked Questions (cont.)

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### **I came here voluntarily, but now they will not let me go.**

While a patient can seek treatment from a facility or hospital on a voluntary admission, problems may arise when you decide to leave.

A voluntary admission does not guarantee your right to leave at any time. If you want to leave, you must give the facility 24 hours notice. This gives the facility the chance to make a medical decision on whether it can allow you to leave or whether it needs to take steps to legally hold you. If the facility decides to hold you, it must inform you, and it must file a petition with the court within five days. Once this has been done, the facility can legally hold you until a hearing.

You should be given the opportunity to appear in court for your hearing. However, the facility can petition the court not to have you appear for reasons that your appearance in court would be harmful to you.

### **I am not mentally ill and do not belong here.**

Should the hospital staff feel differently, then you need to find out by what authority you are being held. If it is a type of commitment order, then it will take a new court order to release you.

You have the right to petition the committing court for a hearing. The law only allows for one review per year, unless the court determines that an additional hearing is needed for good cause.

## **I do not want or like medications or other treatments.**

Since medications are an important part of your treatment, you should make every effort to resolve your concerns. Your right to refuse treatment or medications depends on your commitment status.

If you have concerns, first talk with your doctor or treatment team. You have the basic right to have the treatment explained to you, along with the reasons as to why one type of treatment is considered appropriate and the possible, significant, adverse effects of the treatment. The facility is also required to inform you of any appropriate alternative treatments and the various types of providers of mental health services. When you are to speak to either your treatment team or doctor, be ready to explain your concerns and your reasons for wanting changes made in your current medication or treatment plan.

If you are a voluntarily admitted patient, you have the right to refuse your treatment. However, if you are receiving treatment under a court-ordered commitment, you can not refuse treatment. You may, however, petition the court for a hearing to ask for changes in your treatment or medications. Often, once such a petition has been filed, the facility may suspend the treatment in dispute, pending a hearing on the issue.

## **IPAS's Responses to Frequently Asked Questions (cont.)**

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### **Restraints/seclusion were used against my wishes.**

Under certain circumstances the facility can legally use restraints or seclusion. They are not to be used unless there is an emergency situation to prevent danger, abuse or injury to the patient or others.

Restraints or seclusion may be used only if less restrictive interventions have been attempted and failed. Only a physician can authorize seclusion or restraint. His/her order must be documented and time limited.

While in seclusion or restraint, a patient must be frequently observed by staff with written documentation in the treatment record.

If you have been restrained or secluded and you feel the use of these measures was not necessary or was inappropriate, you have the right to file a complaint or grievance about it.

### **I do not like or want my doctor.**

You have the legal right to seek the treatment from a doctor of your choice, provided you can pay for it. If you are under a commitment order, you can request a change of doctor, but the facility is not obligated to provide you with a new doctor.

### **Do I have to pay for the treatment forced upon me?**

Indiana does have a law that establishes that the cost of mental health care provided under involuntary commitment is the patient's responsibility.

## **My social security check goes to someone else.**

The Social Security Administration (SSA) has established an administrative process to appoint a representative payee for another individual. This appointment occurs when SSA believes that an SSA recipient is incapable of managing his/her own benefits due to either his/her physical or mental conditions.

The representative payee is required to spend the check for your needs. Such expenses can be for items such as shelter, treatment, food, clothing and personal items of comfort. But, there is much power given to the payee in determining what needs are to be met from the Social Security benefit of the patient. SSA does require the payee to account for how the money was spent.

Since the appointment of a payee by SSA is done by SSA and not by a court, you can challenge the SSA decision through the normal Social Security Administration appeal process.

## **The hospital is taking all of my Social Security check.**

The hospital may have been appointed as your representative payee. If this is the case, then the Social Security Administration has empowered the facility to make decisions regarding the use of the patient's Social Security benefit. The hospital can make decisions regarding what bills to pay, which includes payment of the hospital bill. Payment of the hospital bill, as noted on page 16, is the financial responsibility of the individual receiving treatment.

## IPAS's Responses to Frequently Asked Questions (cont.)

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### **Who can I complain to?**

The right to bring forth grievances is guaranteed by federal law. The problem for most people is finding out how to make their complaints or grievances known. Depending on the law and issue, certain individuals and groups may or may not have the authority to either assist or investigate the complaint.

The most logical first step is to contact either your treatment team or social worker. While this is not usually considered a formal step to any grievance process, it does allow for a possible resolution. They can also tell you how to file a complaint in your facility.

Each program or facility is required to offer a fair, timely and impartial grievance procedure. This process is only required to address reported allegations concerning violations of federal statute (Appendix B). The facility is obligated to inform the patient of the grievance process and how to access it.

Complaints that don't involve allegations of abuse, neglect or financial exploitation can be directed to the Mental Health Ombudsman Program. If the ombudsman determines that your complaint has merit, he/she will make recommendations to the agency, facility or program. Should the ombudsman believe that the agency, facility or program failed to comply with its recommendations, the matter will be referred to either the Division of Mental Health or Indiana Protection & Advocacy Services (IPAS).

If your issue or concern involves abuse, neglect or financial exploitation, then Adult Protective Services (APS) is the appropriate agency to contact. APS is the agency authorized and empowered by any state law to conduct such investigations.

For concerns involving civil rights, denial of rights or discrimination, you may wish to contact Indiana Protection & Advocacy Services (IPAS). IPAS can look into the matter and assist you in exercising and understanding your rights.

Be aware that some agencies or programs may, by law, be restricted to certain rights areas or may only have the authority to address certain issues. Also be aware that you may have a limited period of time to file a complaint about an issue.

Find out:

- Which agency is appropriate for your complaint.
- What period of time you have to file a complaint.
- How to file your complaint.
- If you can file your complaint by phone.
- If there is a specific complaint form required.

Adult Protective Services (APS)	1-800-992-6978
Division of Mental Health Consumer Line	1-800-901-1133
Indiana Protection & Advocacy Services Commission	1-800-622-4845
Mental Health Ombudsman Program	1-800-555-6424
Social Security Administration	1-800-772-1213



**Appendix A**  
**Indiana's**  
**Patient Rights Statute**  
**I.C. 12-27**

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities

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## IC 12-27-1 CHAPTER 1. APPLICATION

### **12-27-1-1. Patients covered by article.**

This article applies to a patient receiving mental health services or developmental training in or from a service provider.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-1-2. Individuals under Department of Correction not covered by article.**

This article does not apply to an individual receiving mental health services or developmental training under the Department of Correction.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-1-3. Election to be covered by article.**

A private practitioner or other person not covered by this article may elect to be subject to this article by notifying the director of the appropriate division in writing of the election.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-1-4. Adoption of rules.**

Each division shall adopt rules under IC 4-22-2 to implement this article.

**HISTORY:** P.L.2-1992, § 21.

## **IC 12-27-2 CHAPTER 2. RIGHTS OF PATIENTS**

### **12-27-2-1. Enumeration of rights.**

Subject to section 2 [IC 12-27-2-2] of this chapter, a patient is entitled to all of the following:

- (1) Mental health services or developmental training:
  - (A) In accordance with standards of professional practice;
  - (B) Appropriate to the patient's needs; and
  - (C) Designed to afford a reasonable opportunity to improve the patient's condition.
- (2) Humane care and protection from harm.
- (3) The right to practice the patient's religion.
- (4) Contact and consultation with legal counsel and private practitioners of the patient's choice at the patient's expense.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-2-2. Limitations on rights.**

- (a) The rights set forth in section 1 [IC 12-27-2-1] of this chapter are subject to the limitation that there may be certain conditions for which there is no known effective treatment or developmental training.
- (b) A service provider is not required to afford mental health services or developmental training where treatment would not be likely to produce a significant improvement.

**HISTORY:** P.L.2-1992, § 21.

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities (cont.)

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## **12-27-2-3. Constitutional, statutory and civil rights.**

(a) A patient is entitled to exercise the patient's constitutional, statutory and civil rights except for those rights that have been denied or limited by an adjudication or finding of mental incompetency in a guardianship or other civil proceeding.

(b) This section does not validate the otherwise voidable act of an individual who was:

- (1) Mentally incompetent at the time of the act; and
- (2) Not judicially declared to be mentally incompetent.

**HISTORY:** P.L.2-1992, § 21.

## **IC 12-27-3 CHAPTER 3. CONDITIONAL RIGHTS OF PATIENTS IN RESIDENTIAL SETTINGS**

### **12-27-3-1. "Reasonable means of communication" defined.**

As used in this chapter, "reasonable means of communication" includes the following rights:

- (1) To be visited at reasonable times.
- (2) To send and receive sealed mail.
- (3) To have access to a reasonable amount of letter writing materials and postage.
- (4) To place and receive telephone calls at the patient's own expense.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-3-2. Additional rights.**

The rights described in this chapter are in addition to the rights recognized in IC 12-27-2.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-3-3. Enumeration of rights.**

Subject to section 4 [IC 12-27-3-4] of this chapter, a patient receiving services or training in a residential setting is conditionally entitled to do all of the following:

- (1) Wear the individual's own clothes.
- (2) Keep and use personal possessions.
- (3) Keep and spend a reasonable amount of the individual's own money.
- (4) Have access to individual storage space for private use.
- (5) Maintain reasonable means of communication with persons outside the facility.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-3-4. Denial or limitation of rights.**

The conditional rights recognized in this chapter may be denied or limited as follows:

- (1) In the circumstances and according to the procedures established by rules of the appropriate division.
- (2) Because of inconsistency with the design of a treatment or habilitation program if the program design has been approved by the division.
- (3) On an individual basis, only for good cause as set forth in the individual treatment record and approved by the person primarily responsible for the patient's care and treatment.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-3-5. Notice of denial or limitation of rights.**

The service provider shall give notice of denial or limitation of rights under section 4 [IC 12-27-3-4] of this chapter to the following:

- (1) The patient.
- (2) The guardian or appointed advocate of the patient.

**HISTORY:** P.L.2-1992, § 21.

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities (cont.)

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## IC 12-27-4 CHAPTER 4. SECLUSION AND RESTRAINT OF PATIENTS

### **12-27-4-1. Grounds for seclusion or restraint.**

A service provider may use seclusion or restraint of a patient only in the following cases:

- (1) When necessary to prevent danger of abuse or injury to the patient or to others.
- (2) As a measure of therapeutic treatment.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-4-2. Record of instances of seclusion or restraint.**

A service provider shall record all instances of restraint or seclusion and detailed reasons for the restraint or seclusion in the patient's habilitation or treatment record.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-4-3. Observation of restrained or secluded patient.**

A service provider shall do the following:

- (1) Frequently observe a patient who is restrained or secluded.
- (2) Enter written notification of the observation in the patient's treatment or habilitation record.

**HISTORY:** P.L.2-1992, § 21.

## **IC 12-27-5 CHAPTER 5. REFUSAL OF TREATMENT**

### **12-27-5-1. Voluntary patients.**

An adult voluntary patient who is not adjudicated mentally incompetent may refuse to submit to treatment or a habilitation program.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-5-2. Involuntary patients.**

(a) An involuntary patient who wants to refuse to submit to treatment or a habilitation program may petition the committing court or hearing officer for consideration of the treatment or program.

(b) In the absence of a petition made under subsection (a), the service provider may proceed with the proposed treatment or habilitation program.

**HISTORY:** P.L.2-1992, § 21.

## **IC12-27-6 CHAPTER 6. INFORMATION CONCERNING RIGHTS OF PATIENTS**

### **12-27-6-1. Patient to have access to information on rights.**

The administrative head of a facility subject to this article shall ensure that each patient in the service provider's care has access to the information contained in this article respecting the patient's rights.

**HISTORY:** P.L.2-1992, § 21.

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities (cont.)

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## **12-27-6-2. Patient to be informed concerning nature and effects of treatment.**

A service provider shall inform all patients of the following:

- (1) The nature of the treatment or habilitation program proposed.
- (2) The known effects of receiving and of not receiving the treatment or habilitation
- (3) Alternative treatments or habilitation programs, if any.

**HISTORY:** P.L.2-1992, § 21.

## **12-27-6-3. Eligible patient to be informed of right to refuse treatment.**

(a) A service provider shall inform all adult voluntary patients who are not adjudicated mentally incompetent of the right to refuse to submit to treatment or a habilitation program.

(b) A service provider shall inform all involuntary patients, verbally and in writing, of the right to petition the committing court or hearing officer for consideration of the treatment or program.

**HISTORY:** P.L.2-1992, § 21; P.L. 121-1996, § 2.

## **IC 12-27-7 CHAPTER 7. WAIVER OF RIGHTS**

### **12-27-7-1. Waiver to be given voluntarily and knowingly.**

A patient may waive any of the rights enumerated in this article if the waiver is given voluntarily and knowingly.

**HISTORY:** P.L.2-1992, § 21.

### **12-27-7-2: Withdrawal of waiver.**

A waiver made under section 1 [IC 12-27-7-1] of this chapter may be withdrawn at any time.

**HISTORY:** P.L.2-1992, § 21.

**12-27-7-3. Admission to treatment conditioned on waiver prohibited.**

Admission to a treatment or habilitation program may not be conditioned upon the giving of a waiver under section 1 [IC 12-27-7-1] of this chapter.

**HISTORY:** P.L.2-1992, § 21.

**IC 12-27-8 CHAPTER 8. REMEDIES**

**12-27-8-1. Violations remedied under this chapter.**

A violation of rights recognized by this article may be remedied under this chapter.

**HISTORY:** P.L.2-1992, § 21.

**12-27-8-2. Legal actions – money damages.**

(a) An individual whose rights were violated or a person authorized by statute to act on the individual's behalf may bring an action.

(b) An action under this section shall be brought in a court that has jurisdiction.

(c) In an action under this section, money damages may be awarded only for willful or wanton violation of the rights recognized by this article.

**HISTORY:** P.L.2-1992, § 21.

**12-27-8-3. Administrative actions.**

A violation of rights recognized by this article may be remedied by an appropriate administrative action, including the following:

(1) Disciplinary action against an employee.

(2) Withdrawal of certification, license or funding of a service provider.

**HISTORY:** P.L.2-1992, § 21.

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities (cont.)

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## IC 12-27-9 CHAPTER 9. MENTAL HEALTH OMBUDSMAN PROGRAM

### **12-27-9-1. [Repealed].**

This section, concerning applicability of the chapter, was repealed by P.L.100-1998, § 2, effective March 13, 1998.

### **12-27-9-2. Information and records confidential.**

Except as provided under section 6 [IC 12-27-9-6] of this chapter, all information and records of the ombudsman under this chapter are confidential and may not become public records or be subject to a subpoena or discovery proceedings.

**HISTORY:** P.L. 40-1994, § 62.

### **12-27-9-3. Operation of program.**

Within the limits of appropriated funds, the Division of Mental Health shall contract in writing with a nonprofit corporation for the operation of the mental health ombudsman program. The nonprofit corporation must:

- (1) Be qualified to receive tax deductible contributions under Section 170 of the Internal Revenue Code [26 U.S.C. § 170];
- (2) Have offices statewide; and
- (3) Have experience in mental health advocacy.

**HISTORY:** P.L.40-1994, § 62; P.L. 215-2001, § 75.

**12-27-9-4. Requirements of program – records.**

(a) The mental health ombudsman program operated under this chapter must do the following:

- (1) Have at least one (1) full-time person to operate the program.
- (2) Recruit and train volunteers to help carry out the duties of the program under this chapter.
- (3) Mediate or advocate on behalf of mental health patients.
- (4) At the request of a mental health patient, or upon receiving a complaint or other information affording reasonable grounds to believe that the rights of a mental health patient who is not capable of requesting assistance have been adversely affected, gather information about, analyze and review on behalf of the mental health patient, the actions of an agency, a facility or a program.
- (5) At reasonable times in the course of conducting a review, enter and view premises within the control of an agency, a facility or a program.

(b) The mental health ombudsman shall maintain records of all activities on behalf of consumers and report all findings to the division on a quarterly basis.

**HISTORY:** P.L. 40-1994, § 62.

# ARTICLE 27. Rights of Individuals Being Treated for Mental Illness or Developmental Disabilities (cont.)

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## **12-27-9-5. Receipt of complaints – determination of complaint – recommendations.**

(a) The ombudsman may receive a complaint from the Division of Mental Health's toll-free number (IC 12-21-5-1.5) or any source concerning an action by an agency, a facility or a program. After completing a review, the ombudsman shall inform the complainant and the agency, facility or program that the review has been completed.

(b) If, after:

- (1) reviewing a complaint;
- (2) considering the response of an agency, a facility or a program; and
- (3) considering any other pertinent material;

the mental health ombudsman determines that the complaint has merit, the ombudsman may make recommendations to that agency, facility or program.

(c) At the ombudsman's request, the agency, facility or program shall, within a reasonable time, inform the ombudsman about the action taken on the ombudsman's recommendation under subsection (b) or the reasons for not complying with the ombudsman's recommendation.

**HISTORY:** P.L. 40-1994, § 62; P.L. 215-2001, § 76.

**12-27-9-6. Reference to division of mental health and addiction or Indiana Protection and Advocacy Services Commission – statistics.**

(a) If the ombudsman believes that the agency, facility or program has failed to comply with the ombudsman's recommendations, the ombudsman shall refer the matter to the Division of Mental Health and Addiction or the Indiana Protection and Advocacy Services Commission as appropriate.

(b) The ombudsman shall compile annual statistics on each agency, facility or program on which it reviews a complaint or conducts an investigation and determines that the complaint has merit or the investigation reveals a problem. The statistic must specify the types of complaints or problems and each agency, facility or program that has failed to comply with the ombudsman's recommendations. The statistics shall be reported to the director of the Division of Mental Health and Addiction.

**HISTORY:** P.L.40-1994, § 62; P.L. 215-2001, § 77.



**APPENDIX B**  
**Federal Patient**  
**Bill of Rights Statute**  
**42 USCA § 10841**

# 42 USCA § 10841. United States Code Annotated Title 42 The Public Welfare Chapter 114 – Protection and Advocacy for Individuals Subchapter II – Restatement of the Bill of Rights for Mental Health Patients

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It is the sense of the Congress that, as previously stated in title V of the Mental Health Systems Act (42 USCS §§ 9501 et. seq.), each state should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require, and that in making such review and revision, States should take into account the recommendations of the President's Commission on Mental Health and the following:

**(1) A person admitted to a program or facility for the purpose of receiving mental health services should be accorded the following:**

- (A) The right to appropriate treatment and related services in a setting and under conditions that –
  - i) are the most supportive of such person's personal liberty; and
  - ii) restrict such liberty only to the extent necessary consistent with such person's treatment needs, applicable requirements of law and applicable judicial orders.
- (B) The right of an individualized, written, treatment or service plan (such plan to be developed promptly after admission of such person), the right to treatment based on such plan, the right to periodic review and reassessment of treatment and related service needs and the right to appropriate revision of such plan, including any revision necessary to provide a description of mental health services that may be needed after such person is discharged from such program or facility.

- (C) The right to ongoing participation, in a manner appropriate to such person's capabilities, in the planning of mental health services to be provided such person (including the right to participate in the development and periodic revision of the plan described in subparagraph (B)), and, in connection with such participation, the right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand, of –
- i) such person's general mental condition and, if such program or facility has provided a physical examination, such person's general physical condition;
  - ii) the objectives of treatment;
  - iii) the nature and significant possible adverse effects of recommended treatments;
  - iv) the reasons why a particular treatment is considered appropriate;
  - v) the reasons why access to certain visitors may not be appropriate; and
  - vi) any appropriate and available alternative treatments, services and types of providers of mental health services.
- (D) The right not to receive a mode or course of treatment, established pursuant to the treatment plan, in the absence of such person's informed, voluntary, written consent to such mode or course of treatment, except treatment –
- i) during an emergency situation if such treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or
  - ii) as permitted under applicable law in the case of a person committed by a court to a treatment program or facility.
- (E) The right not to participate in experimentation in the absence of such person's informed, voluntary, written consent; the right to appropriate protections in connection with such participation, including the right to a reasonable explanation of the procedure to be followed, the benefits to be expected, the relative advantages of alternative treatments and the potential discomforts and risk; and the right and opportunity to revoke such consent.

## 42 USCA § 10841. (cont.)

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- (F) The right to freedom from restraint or seclusion, other than as a mode or course of treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.
- (G) The right to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to such person with regard to personal needs.
- (H) The right to confidentiality of such person's records.
- (I) The right to access, upon request, to such person's mental health care records, except such person may be refused access to –
  - i) information in such records provided by a third party under assurance that such information shall remain confidential; and
  - ii) specific material in such records if the health professional responsible for the mental health services concerned has made a determination in writing that such access would be detrimental to such person's health, except that such material may be made available to a similarly licensed health professional selected by such person, and such health professional may, in the exercise of professional judgment, provide such person with access to any or all parts of such material or otherwise disclose the information contained in such material to such person.
- (J) The right, in the case of a person admitted on a residential or inpatient care basis, to converse with others privately, to have convenient and reasonable access to the telephone and mails and to see visitors during regularly scheduled hours, except that, if a mental health professional treating such person determines that denial of access to a particular visitor is necessary for treatment purposes, such mental health professional may, for a specific, limited and reasonable period of time, deny such access if such mental health professional has ordered such denial in writing and such order has been incorporated in the treatment plan for such person. An order denying such access should include the reasons for such denial.

- (K) The right to be informed promptly at the time of admission and periodically thereafter, in language and terms appropriate to such person's condition and ability to understand, of the rights described in this section.
- (L) The right to assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure provided for or by the program or facility.
- (M) Notwithstanding subparagraph (J), the right of access to (including the opportunities and facilities for private communication with) any available –
  - i) rights protection service within the program or facility;
  - ii) rights protection service within the state mental health system designed to be available to such person;
  - iii) system established under title I [42 USCS §§ 10801 et seq.] to protect and advocate the rights of individuals with mental illness; and
  - iv) qualified advocate;for the purpose of receiving assistance to understand, exercise and protect the rights described in this section and in other provisions of law.
- (N) The right to exercise the rights described in this section without reprisal, including reprisal in the form of denial of any appropriate, available treatment.
- (O) The right to referral as appropriate to other providers of mental health services upon discharge.

**(2)**

- (A) The rights described in this section should be in addition to and not in derogation of any other statutory or constitutional rights.
- (B) The rights to confidentiality of and access to records as provided in subparagraphs (H) and (I) of paragraph (1) should remain applicable to records pertaining to a person after such person's discharge from a program or facility.

## 42 USCA § 10841. (cont.)

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### (3)

- (A) No otherwise eligible person should be denied admission to a program or facility for mental health services as a reprisal for the exercise of the rights described in this section.
- (B) Nothing in this section should –
  - i) obligate an individual mental health or health professional to administer treatment contrary to such professional's clinical judgment;
  - ii) prevent any program or facility from discharging any person for whom the provision of appropriate treatment, consistent with the clinical judgment of the mental health professional primarily responsible for such person's treatment, is or has become impossible as a result of such person's refusal to consent to such treatment;
  - iii) require a program or facility to admit any person who, while admitted on prior occasions to such program or facility, has repeatedly frustrated the purposes of such admissions by withholding consent to proposed treatment; or
  - iv) obligate a program or facility to provide treatment services to any person who is admitted to such program or facility solely for diagnostic or evaluative purposes.
- (C) In order to assist a person admitted to a program or facility in the exercise or protection of such person's rights, such person's attorney or legal representatives should have reasonable access to –
  - i) such person;
  - ii) the areas of the program or facility where such person has received treatment, resided or had access; and
  - iii) pursuant to the written authorization of such person, the records and information pertaining to such person's diagnosis, treatment and related services described in paragraph (1)(I).

(D) Each program and facility should post a notice listing and describing, in language and terms appropriate to the ability of the persons to whom such notice is addressed to understand, the rights described in this section of all person admitted to such program or facility. Each such notice should conform to the format and content for such notices and should be posted in all appropriate locations.

**(4)**

- (A) In the case of a person adjudicated by a court of competent jurisdiction as being incompetent to exercise the right to consent to treatment or experimentation described in subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph or to provide authorization as described in paragraph (3)(C)(iii), such right may be exercised or such authorization may be provided by the individual appointed by such court as such person's guardian or representative for the purpose of exercising such authorization.
- (B) In the case of a person who lacks capacity to exercise the right to consent to treatment or experimentation under subparagraph (D) or (E) of paragraph (1), or the right to confidentiality of or access to records described in subparagraph (H) or (I) of such paragraph or to provide authorization as described in paragraph (3)(C)(iii), because such person has not attained an age considered sufficiently advanced under state law to permit the exercise of such right or such authorization to be legally binding, such right may be exercised or such authorization may be provided on behalf of such person by a parent or legal guardian of such person.
- (C) Notwithstanding subparagraphs (A) and (B), in the case of a person admitted to a program or facility for the purpose of receiving mental health services, no individual employed by or receiving any remuneration from such program or facility should act as such person's guardian or representative.



# RESOURCES

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**Adult Protective Services** – state program that handles allegations of abuse, neglect and financial exploitation of disabled adults and elderly.

**1-800-992-6978**

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**The ARC of Indiana** – state chapter, organization advocating for people with mental retardation and related disabilities and their families.

**1-800-382-9100**

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**The ARC** – national office located in Washington, D.C.; local chapter is ARC of Indiana.

**1-800-433-5255**

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**Attorney General of Indiana** – state agency that, among other duties, investigates complaints regarding Indiana licensed professionals to determine whether they have violated licensing statutes and regulations as well as allegations of fraud in Medicaid.

**Consumer Protection Unit 1-800-382-5516**

**Medicaid Fraud Unit 1-800-382-1039**

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**Division of Mental Health’s Consumer Service Line** – the consumer service line forwards information received about public mental health facilities on to the Division of Mental Health (DMH) and to the involved facility. DMH responds to all callers.

**1-800-901-1133**

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**American Civil Liberties Union of Indiana** – Indianapolis, advocates at no charge for Indiana resident or group whose constitutional rights have been violated by governmental agency.

**1-317-635-4059**

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**Indiana Civil Rights Commission** – state agency that investigates allegations of discrimination due to disability, race, sex, religion, national origin or national ancestry in education, employment, credit, public accommodations and housing.

**1-800-628-2909**

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**Indiana’s Mental Health Ombudsman** – state program operated by the Mental Health Association. See page 30.

**1-800-555-6424**

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**Indiana’s Nursing Home Ombudsman** – state agency answers questions and provides referral services regarding long term care, nursing homes.

**1-800-622-4484**

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**Indiana Protection & Advocacy Services Commission** – state agency that advocates for individuals with a disability when a right or discrimination has occurred due to their disability.

**1-800-622-4845**

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**Indiana State Department of Health** – state agency that regulates, licenses and investigates allegations concerning long-term care facilities.

**1-317-233-1325**

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**Key Consumer Organization (Indianapolis)** – consumers of mental health services, self-advocacy group.

**1-800-933-KEYS (5397)**

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**Legal Services Program of Northern Indiana, Inc.** – provides legal guidance and representation to low-income Indiana residents, in civil cases only (northern, central and western counties).

**1-800-288-8121**

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**Legal Services of Northwest Indiana, Inc.** – provides legal guidance and representation to low-income Indiana residents, in civil cases only (Lake and Porter counties).

**1-219-886-3161**

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**Legal Services Organization of Indiana, Inc.** – provides legal guidance and representation to low-income Indiana residents, in civil cases only (central and southern counties).

**1-800-869-0212**

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**Medicaid Recipient Information**

**1-800-457-4584**

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**Mental Health America of Indiana** – state chapter, organization working to increase public understanding and acceptance of persons with a mental illness, foster the delivery of the most appropriate and effective services to all individuals in need and initiate reform of mental health service delivery system through advocacy and public policy.

**1-800-555-6424**

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**National Alliance for the Mentally Ill, Indiana** – state chapter, organization dedicated to providing support, education and advocacy for consumers of mental health services and their families.

**1-800-677-6442 Indiana Chapter**  
**Family Helpline 1-800-950-6264 National Office**

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**National Mental Health Association** – national office; local chapter is Mental Health Association in Indiana.

**1-800-969-6642**

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**Social Security Administration** – federal agency that administers the social security program information, form requests.

**1-800-772-1213**

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**U.S. Department of Health and Human Services, Office of Civil Rights  
Region 5** – federal agency assigned to investigate allegations of discrimination in health and human services, i.e. hospitals, treatment facilities.

**1-312-886-2359**

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Additional copies may be obtained by contacting:

**Indiana Protection and Advocacy Services (IPAS)**

4701 North Keystone Ave., Suite 222  
Indianapolis, Indiana 46205

Visit our Web Site at [www.in.gov/ipas](http://www.in.gov/ipas)

Voice 317-722-5555 or 800-622-4845  
TTY 317-722-5563 or 800-838-1131  
Fax 317-722-5564



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